

## **SUMMARY OF PROPOSED RULEMAKING**

*This Summary provides an overview of the Proposed Rulemaking approved for publication and public comment by the Susquehanna River Basin Commission on June 11, 2010.*

### **PART 806 – REVIEW AND APPROVAL OF PROJECTS**

#### **§806.4 Projects requiring review and approval.**

When this section was originally published as final (71 FR 78570, December 29, 2006), updating and expanding the range of projects subject to Susquehanna River Basin Commission (Commission) review and approval, a pre-existing regulatory provision was inadvertently omitted and this proposed rulemaking attempts to correct that omission. Specifically, 18 CFR §806.4(a)(2) would be modified to indicate that the taking or removal of water by a public water supplier indirectly through another public water supply system or another water facility (aka, a subsidiary allocation) constitutes a withdrawal that is subject to review and approval.

An amendment to subsection (a)(2)(iv) is proposed to clarify that sponsors of grandfathered surface or groundwater withdrawal projects are required to submit applications for review and approval whenever the project will increase its withdrawal from an existing source, or initiate a withdrawal from a new source, or combination of sources. This clarification memorialized existing Commission policy under the current rule.

An amendment to subsection (c) would provide that sponsors of certain classes of projects undergoing a change of ownership, and thus triggering review and approval, would have up to 90 days from the date of ownership transfer to submit applications under the rule. The current rule requires submission of the application on or before the date of ownership change. This amendment is consistent with those recommended for transfers of approval under 18 CFR §806.6, as discussed below.

#### **§806.6 Transfer of approvals.**

The proposed amendments to this section are intended to clarify that certain approvals may be transferred or conditionally transferred administratively, rather than requiring full Commission action on such transfer requests. The existing phraseology authorizing transfers or conditional transfers of approval “without prior Commission review and approval” was misleading in that respect and is proposed to be deleted, along with other editorial changes intended to add more clarification to this section. Also, the existing rule requires the initiation of transfer requests for some categories of approvals on or before the date of transfer, and yet other categories are to do so within 90 days of the date of transfer. The proposal would uniformly require all applications to be submitted within 90 days of the date of transfer.

A more substantive change being proposed would break out situations where project sponsors with existing approvals undergo a name change and seek to have the approval changed to reflect the new name. Rather than being categorized as a transfer of approval, which is triggered by a change in ownership, a new subsection is added to more appropriately provide for “re-issuance” of such approvals to reflect the name change of the existing project sponsor.

**§806.7 Concurrent project review by member jurisdiction.**

An amendment is proposed to this section to clarify that existing language recognizing that agencies of the member jurisdictions exercise “review authority” over projects also regulated by the Commission is intended to mean and should be stated as “review and approval authority.”

**§806.15 Notice of application.**

This section currently sets notification requirements for project sponsors applying for approvals issued by the Commission under its standard docketing procedures, and for Approval by Rule (ABR) natural gas consumptive use (pad site) approvals issued under §806.22(f). However, ABRs issued under §806.22(e) are subject to certain notification standards in that section which are inconsistent with the general notification requirements contained in §806.15. Furthermore, there are requirements contained in §806.22(f) that are redundant with those contained in this section and therefore unnecessary.

The proposed amendments to this section, and complimentary ones proposed for §806.22(e) and (f), are intended to result in all notification requirements for all project approvals being consolidated into this section, including all those having general applicability and those that might be specific to certain classes of project applications.

With regard to specific requirements for certain classes of applications, the proposed amendments would establish the following revised notification standards:

- For groundwater withdrawal applications, rather than just notifying landowners that are contiguous to the project site, notice would have to be given to all landowners listed on the most current tax assessment rolls that are within one-half mile of the proposed withdrawal location.
- For surface water withdrawal applications, rather than just notifying landowners that are contiguous to the project site, notice would have to be given to all landowners listed on the most current tax assessment rolls that are within one-half mile of the proposed withdrawal location and whose property borders the stream, river, lake or water body from which the withdrawal is proposed to be taken.
- For consumptive use applications involving a withdrawal, the applicable groundwater or surface water withdrawal requirements noted above would apply. For consumptive use applications that do not involve a withdrawal (such as those served

by a public water supplier), newspaper notice in the area of the project would be required.

- For out-of-basin diversion applications, there would be additional newspaper notice required in the area outside the basin where the proposed use of the diverted water would occur.
- For into-basin diversion applications, there would be additional newspaper notice required in the area outside the basin where the withdrawal of water proposed for diversion is located.
- For applications to use public water supply as a source for water in natural gas development operations, newspaper notice in the area served by the public water supply system would be required.
- For applications to use wastewater discharge as a source for water in natural gas development operations, newspaper notice would be required in all areas where such discharge water would be used for such development purposes.

In addition to the foregoing, the proposed amendments establish uniform proof of notification standards and would require project sponsors to maintain all proofs of notice for the duration of the approvals related to such notices.

#### **§806.22 Standards for consumptive uses of water.**

The Approval by Rule (ARB) provisions contained in both subsection (e) for consumptive water project sponsors using public water supply systems (other than for natural gas development) as their sole source of water for their projects, and those contained in subsection (f) for natural gas development, would be modified to clarify that the Executive Director has the authority not only to grant or deny such ABRs, but to “suspend, rescind, modify or condition” such approvals as well. Such authority was implied in the existing language and the existing policy of the Commission supports that interpretation. The proposed amendment provides that clarification.

A second amendment common to both subsections would be to require all project sponsors seeking an ABR to satisfy the applicable notice requirements proposed for §806.15 and noted above.

With regard to ABRs issued under subsection (f) for natural gas development projects, language is also recommended for subsection (f)(12)(i) to clarify that project sponsors registering approved water withdrawals must record daily and report quarterly the quantity of water obtained from all registered sources. Additionally, (f)(12)(ii) would be modified to delete “other reclaimed waters” as potential sources, thus limiting the class of approvable sources under this provision to public water supply systems and wastewater discharges.

#### **§806.24 Standards for diversions.**

The proposed amendments to this section would add certain decisional criteria for consideration by the Commission while acting on applications for into-basin diversions,

similar to what now is provided for consideration in acting on out-of-basin diversion applications. Specifically, the proffered language would add criteria related to the potential introduction of invasive or exotic species that may be injurious to the water resources of the basin, and the extent to which the proposed diversion would satisfy all other applicable standards contained in subpart C of Part 806.

### **§806.35 Fees.**

This section currently indicates that project sponsors have an affirmative duty to pay fees established by the Commission. The proposed amendatory language would expand this to indicate that the purpose of such fees is to cover the Commission's costs of administering its regulatory program and any extraordinary costs associated with specific projects.

## **PART 808 – HEARINGS AND ENFORCEMENT ACTIONS**

### **§808.2 Administrative appeals.**

This section currently establishes a procedure for the filing of administrative appeals to actions or decisions rendered by the Commission or the Executive Director. The broad terms of the current regulation have resulted in some abuse of the appeal process, including attempts to file appeals of appeal decisions, appeals on stay requests and other extraneous or repetitive pleadings that frustrate the original purpose of providing the appropriate administrative review envisioned when this rule became effective in 2007. In short, this abuse has been enabled by the fact that there is no limitation on the type of Commission actions that are eligible for appeal under this section, leaving any action of the Commission subject to this process.

Additionally, the current regulation does not contain provisions for handling appeals from administrative (staff) level "Access to Records" determinations. The new "Access to Records" adopted by the Commission in 2009 (Policy No. 2009-02) provides for appeal of such decisions to the Commission. Finally, the current regulation does not specify the authority of an appointed hearing officer to admit or bar intervenor parties based on the principle of standing.

The proposed revisions would generally limit appeals to a single filing, and only to project approval matters and appeals of staff level "Access to Records" decisions. Executive Director determinations on requests for stay would not be appealable to the Commission and would stand until the time of the Commission proceeding on the appeal (unless overturned by a court of competent jurisdiction). Lastly, the appointed hearing officer is given authority to admit or bar intervenor parties based on the legal principle of standing.